

(2010) 08 DEL CK 0049

In the Delhi High Court

Case No : Writ Petition (C) No. 11556 of 2009 and RP No. 146 of 2010, CMs 11359-11360, 12484 of 2009, 8877-78 of 2010

Electro Steel Castings Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Mineral Concession Rules, 1960 — Rule 21(2), 24A(3), 24B, 26, 26(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A, 4A(4), 8(2), 8(3)

Citation : (2010) 08 DEL CK 0049

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : A.K. Ganguli and Gaurav Kejriwal, for the Appellant; Maneesha Dhir, Preeti Dalal, K.P.S. Kohli for R-1 and R-2 and Kirti Mishra, for R-3, for the Respondent

Judgement

S. Muralidhar, J.

Review Petition No. 146 of 2010

1. This is a petition filed by the Petitioner Electro Steel Castings Ltd., ("ESCL") seeking review and recall of the order dated 26th February 2010 disposing of Writ Petition (C) 11556 of 2009.

2. The background to the main writ petition is that the Petitioner is a public limited company having its office at Rajgangpur, Orissa and carrying on business of manufacture of ductile iron spun pipes, ductile iron fittings and cast iron sun pipes etc. Respondent No. 3 Steel Authority of India Limited ("SAIL") was on 6th January 1960 granted by the Mining and Geology Department, State of Orissa, Respondent No. 4, a mining lease (ML) over an area of 569.64 acres (230.55 hectares) in respect of limestone and dolomite in village Purnapani, District Sundergarh, Orissa for a period of 20 years. The ML was renewed for a further period of 20 years on 6th January 1980 up to 5th January 2000.

3. SAIL submitted an application on 30th December 1998 to Respondent No. 4 for a second renewal of the ML. A notice was issued by Respondent No. 4 under Rule 26(1) of the Mineral Concession Rules, 1960 ("MCR") calling upon the SAIL to appear before the Additional Secretary, Department of Steel and Mines, Government of Orissa on 3rd June 2006 and 11th August 2006 for a personal hearing. On 28th September 2006, the Collector Sundergarh, in the light of Section 4-A of the Mines and Mineral (Development & Regulation) Act, 1957 [hereafter "the MMDR Act"] read with Rule 28 of the MCR recommended to the Department of Steel and Mines for rejection of the second renewal application, inter alia, on the ground that the SAIL had stopped mining operations since 1st March 2003 and that there was no production or dispatch of limestone during the said period. Based on the said recommendation, by an order dated 23rd October 2006 Respondent No. 4 rejected the SAIL's second renewal application on the ground that "the applicant is deficient of Mining Dues Clearance Certificate and it is assumed that the party is no more interested in the area applied for."

4. SAIL challenged the order dated 23rd October 2006 by filing a revision petition before the Central Government (Mines Tribunal) Respondent No. 4 herein on 19th January 2007 along with an application for stay.

5. The Petitioner states that on 8th October 2007, it came across an advertisement inserted by SAIL in the Economic Times, Delhi Edition inviting "expression of interest" from the public at large to set up a joint venture company for manufacture of cement by using the slag generated by SAIL and the limestone available at Purnapani mines. According to the Petitioner, this invitation by SAIL of "expressions of interest" made it clear that SAIL did not require the limestone or dolomite from the said mine for steel making since it had already large reserves of limestone and dolomite of blast furnace grade which was lying idle in various leasehold areas already granted to it. On the other hand, the Petitioner required limestone and dolomite for use in blast furnace for manufacture of pig iron, which was used as raw material for manufacture of ductile iron pipes, ductile iron fittings and cast iron spun pipes. The Petitioner also proposed to expand its manufacturing capacity for which it required uninterrupted supply of limestone and dolomite for its captive consumption.

6. On 28th February 2008, the Petitioner submitted an application to Respondent No. 4 for grant of an ML over the said area of 569.64 acres (230.55 hectares) in village Purnapani, District Sundergarh, Orissa. On 4th March 2008 the Petitioner filed an application seeking impleadment in the revision petition filed by the SAIL before the Mines Tribunal, (Respondent No. 1) on the ground that it had a contingent interest as its application for grant of mining lease was dependent on the rejection of the revision petition filed by the SAIL. Only upon such rejection would Rule 59(2) MCR be relaxed and the Petitioner's application for grant of mining lease for captive consumption be considered. SAIL opposed the above impleadment application on the ground that there was no provision for impleading a party in a pending revision petition and, therefore, the Petitioner

had no locus standi. Respondent No. 4 filed a counter affidavit maintaining that the renewal application of SAIL was deficient for want of Mining Dues Clearance Certificate and further that the SAIL had stopped mining that area. On 2nd July 2008, the Petitioner filed a rejoinder affidavit relying upon the judgment of the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., (hereafter "the TISCO case") which held that prospective applicants ought to be heard at the time of considering the application made by an existing leaseholder for the renewal of an ML.

7. By an undated order, the Mines Tribunal rejected the Petitioner's application for impleadment but permitted it to intervene in the proceedings. The Petitioner states that it had filed a counter affidavit in the revision petition and also filed an application for stay on 8th October 2008 before the Mines Tribunal praying for an order restraining SAIL from taking any further steps pursuant to the advertisement dated 8th October 2007 inviting applications for entering into a joint venture.

8. The undated order of the Mines Tribunal permitting the Petitioner to intervene was challenged by SAIL before this Court in Writ Petition (C) 81 of 2009. By an order dated 9th January 2009, this Court disposed of the said writ petition with a direction that the entire matter be considered afresh by the Mines Tribunal including the Petitioner's application for impleadment. This Court also directed that the Mines Tribunal will pass a comprehensive order and dispose of the revision application within three months.

9. It is stated that pursuant to the above order, the Mines Tribunal finally heard the matter on 20th March 2009. The Petitioner filed its written submissions on 30th March 2009.

10. By the impugned order dated 30th July 2009, the Mines Tribunal dismissed only the impleadment application filed by the Petitioner holding that it had no locus standi to be impleaded inasmuch as only after the area was notified under Rule 59 (1) of the MCR that the Petitioner could apply for a fresh ML. Aggrieved by the above order of the Mines Tribunal dated 30th July 2009 rejecting its impleadment application, the Petitioner filed the present writ petition.

11. At the time when the said petition was filed in this Court, the revision petition filed by the SAIL before the Mines Tribunal had not yet been finally disposed of. An apprehension was expressed by the Petitioner before this Court that a final order could be passed in the meanwhile and in that event the present writ petition might be rendered infructuous. On 12th October 2009 this Court in its order observed inter alia as under:

Learned Counsel for the respondent No. 3 states that the learned tribunal has already heard the revision petition and the final order is awaited. In these circumstances, I am not inclined to pass any stay order. It is, however, clarified that in case the petitioner succeeds in the present writ petition, appropriate

orders will be passed to protect the interest of the petitioner. It is also clarified that it will be open to the petitioner or the respondent No. 3 to challenge the final order, if any, in accordance with law.

12. In the meanwhile on 18th October 2009, the Mines Tribunal passed the final order in the revision petition filed by SAIL remanding the matter to the Respondent No. 4 State government for a fresh consideration. Thereafter, the Petitioner filed CM No. 16397 of 2009 praying for a stay of the said final order of the Mines Tribunal. The said application was disposed of on 23rd December 2009 "with liberty to the petitioner to challenge and question the order passed by the Mines Tribunal, if so advised."

13. When the matter came up for hearing next on 26th February 2010 this Court disposed of the main writ petition on the ground that it had been rendered infructuous with the revision petition filed by the SAIL before the Mines Tribunal having been disposed of. Thereafter the petitioner filed the present review petition on the ground that the main question whether the Petitioner had right to be impleaded in the revision petition filed by the SAIL before the Mines Tribunal remained undecided. In other words, the locus standi of the Petitioner to be heard in opposition to the application by SAIL for renewal of its ML was required to be decided notwithstanding that by the final order dated 16th October 2009 the Mines Tribunal had, while setting aside the order dated 26th December 2007 passed by Respondent No. 4, remanded the matter to Respondent No. 4 for a fresh consideration. It is urged that unless the question of the locus standi of the Petitioner is decided, it will not be permitted to intervene in the remanded proceedings before the Respondent No. 4

14. This Court has heard the submissions of Mr. A.K. Ganguli, the learned Senior Counsel appearing for the Petitioner, Ms. Kirti Mishra, the learned Advocate appearing for SAIL and Ms. Maneesha Dhir, the learned Counsel appearing for Respondents 1 and 2.

15. It appears to this Court that the Petitioner is right in its contention that whether the Petitioner has the locus standi to oppose the grant of renewal of the ML in favour of SAIL was a question that had been kept alive for decision by the order dated 12th October 2009, the relevant portion of which has been extracted hereinbefore. This somehow escaped the attention of the court while passing the order dated 26 th February 2010.

16. Consequently this Court recalls the order dated 26th February 2010 and restores the writ petition to file.

17. The review petition is accordingly allowed and stands disposed of.

W.P. (C) No. 11556/2009 & CMs 11359-11360, 12484/2009, 887778/2010

18. The background facts to the filing of the writ petition have already been set out hereinbefore. It may be mentioned here that against the order dated 16th October 2009 passed by the Mines Tribunal disposing of the revision petition of

the SAIL, the Petitioner herein has filed CM No. 8877 of 2010 pursuant to the liberty granted by this Court by the order dated 23rd December 2009. The said application, therefore, has also been heard along with the present writ petition.

19. Mr. A.K. Ganguli, learned Senior counsel appearing for the Petitioner placed reliance upon the decision in TISCO case to urge that the Petitioner had the locus standi to be heard in opposition to the prayer made by SAIL for the renewal of its ML. He submitted that notwithstanding the fact that the Petitioner's application for grant of a ML was made only on 28th February 2008, i.e., even after the revision petition was filed by SAIL before the Mines Tribunal, the Petitioner had the right to be heard. It is submitted that since in any event the Mines Tribunal had already disposed of the SAIL's revision petition, the question of the Petitioner having to be heard or impleaded in the said revision petition did not arise. The Petitioner should be permitted to intervene in the proceedings remanded to the State Government (Respondent No. 4) and be heard in opposition to the prayer made by the SAIL for grant of renewal of its ML.

20. Ms. Kirti Mishra, the learned Advocate appearing for the SAIL points out that until under Rule 59 MCR the area in question is notified, the Petitioner's application for grant of an ML for the same area cannot be considered. Only in the event of the application made by the SAIL for renewal of its ML being rejected, will the question of relaxation of the provisions of Rule 59 (1) MCR by the Central Government in exercise of its powers under Rule 59(2) MCR arise. It is only thereafter that the Petitioner's application for ML for captive consumption could be considered. As of today, the Petitioner lacked locus standi to oppose SAIL's application for grant of renewal of its ML. It is submitted that the decision in the TISCO case was clearly distinguishable and did not come to the aid of the Petitioner.

21. In the first place, note may be taken of the relevant provisions of the MMDR Act and the MCR. u/s 4A(4) of the MMDR Act, "where the holder of a mining lease fails to undertake mining operations for a period of two years after the date of execution of the lease or having commenced mining operations, has discontinued the same for a period of two years, the lease shall lapse on the expiry of the period of two years from the date of execution of the lease or, as the case may be, discontinuance of the mining operations".

22. The first proviso of Section 4A(4) MMDR Act permits the State Government "on an application made by the holder of such lease before its expiry under this Sub-section and on being satisfied that it will not be possible for the holder of the lease to undertake mining operations or to continue such operations for reasons beyond his control, make an order, subject to such conditions as may be prescribed, to the effect that such lease shall not lapse." The second proviso gives the leaseholder a further opportunity to make such a prayer seeking revival of the lease from prospective or retrospective date on satisfying the State Government of such non-commencement or discontinuance of mining operations for the reasons beyond his control. This is, however, subject to two revivals

during the entire period of the lease. u/s 8(2), an ML may not be renewed for a period exceeding twenty years. However u/s 8(3) MMDR Act, the State Government may authorise the renewal of an ML in respect of minerals not specified in Parts A and B of the First Schedule to the MMDR Act, for a further period or periods not exceeding twenty years in each case. Limestone and dolomite do not figure in Parts A or B of the First Schedule.

23. Turning to the MCR, the first proviso to Sub-rule (3) of Rule 24 A MCR requires that before granting approval for second or subsequent renewal of an ML in respect of a mineral not specified in Parts A or B of the First Schedule to the MMDR Act, the State Government shall seek a report from the Collector. Under Rule 24 B MCR, every person who is holding an ML for a mineral which is captively consumed, shall be entitled to a renewal of his ML for a period not exceeding twenty years unless he applies for a lesser period. Under Rule 26 MCR, the decision to grant or refuse renewal of an ML has to be a reasoned one, in writing, and can be taken only after giving the applicant an opportunity of being heard.

24. Rule 59(1) of the MCR states that no area which was previously held or which is given under an ML shall be available for grant unless an entry to that effect is made in the register in terms of Rule 7D(2) or Rule 21(2) or Rule 40(2) of the MCR and further that such availability of the area for grant is notified in the official gazette specifying the date from which it shall be available for such grant. Under Rule 59(2) MCR, the Central Government may, for the reasons to be recorded in writing, relax the provisions of Rule 59(1) in any special case. Under Rule 60 MCR, the applications for grant of ML in respect of areas whose availability for grant is required to be notified under Rule 59, shall, where any such notification has been issued under Rule 59 or where such notification has been issued but the period specified therein is not expired "shall be deemed to be premature and shall not be entertained."

25. In the background of the above provisions, when the decision of the Supreme Court in TISCO case is examined, it appears that the Supreme Court did recognize the locus standi of the applicants for the grant of ML to oppose the grant of renewal to the existing ML holder, even prior to the issuance of a notification under Rule 59 MCR. The facts in that case were that TISCO was granted an ML on 22nd October 1952 over an area of 1813 hectares for chromite for a period of 20 years in the Sukinda Valley, Orissa. Subsequent to the passage of the Orissa Estates Abolition Act 1952, the lease was recognised for a period of 20 years with effect from 12th January 1953. After the enactment of the MMDR Act, TISCO was granted renewal of the ML for a period of 20 years till 11th January 1993 subject to the condition that it would set up a beneficiation plant. On 3rd October 1991, more than a year prior to the date of expiry of the ML, TISCO applied for a second renewal u/s 8(3) of the MMDR Act. The State Government recommended to the Central Government that the TISCO's ML would be renewed for a further period of ten years. The Indian Bureau of Mines

also gave similar recommendation to the Central Government. On 3rd June 1993, the Central Government authorized the renewal of the ML over the entire area of 1261.476 hectares. However, before the formal lease could be executed, the Union Minister of State for Steel and Mines, acting on a complaint filed by a Member of Parliament, directed the matter to be kept in abeyance. On 27th September 1993, the Union Minister wrote to the Chief Minister of Orissa stating that the lease area of TISCO should be reduced by half and the balance should be distributed in an equitable manner taking into consideration the need of the genuine consumers for captive consumption.

26. On 5th October 1993, the Central Government superseded its earlier approval dated 3rd June 1993 and renewed TISCO's ML over a reduced area of 651 hectares. On 19th October 1993, TISCO filed a writ petition in the High Court of Orissa challenging the order dated 5th October 1993. In the meanwhile FACOR, Ispat Alloys, JSL and Jindal Ferro Alloys Ltd., applied for MLs over the area for which TISCO had been granted an ML. However, the State Government refused to entertain them as being premature in terms of Rules 59 and 60 MCR.

27. While TISCO's writ petition was pending, the ICCL and JSL filed separate writ petitions challenging the renewal of TISCO's ML by the Central Government. These two entities challenged both the order dated 3rd June 1993 whereby renewal was recommended of the entire lease area of 1261 hectares in favour of TISCO and the order dated 5th October 1993 which reduced the authorization to 651 hectares.

28. By an order dated 4th April 1995, the High Court of Orissa struck down the decisions dated 3rd June 1993 and 5th October 1993 of the Central Government granting renewal of TISCO's ML. It directed the Central Government to reconsider TISCO's application for renewal of the ML in accordance with law. The Central Government was also directed to give a personal hearing to, and consider the applications of, the other parties before the Court. In para 57 of the judgment, the High Court noted that there were two courses of action open to it, namely, "(i) to accept the submission of the counsel for the State Government that all the writ petitions should be dismissed and the parties may be asked to exhaust the alternative remedy of permitting the State Government to take a decision as authorised by the Central Government and if any party is aggrieved it may move the Central Government under the Act and the Rules, or (ii) the Court may dispose of the writ petitions giving certain specific directions in the shape of guidelines to the Governments as well as other authorities under Act to consider in the light thereof if there is any necessity to renew the lease for the whole or part of the area covered under the lease." The High Court opted for the later course and held that the Central Government should hear the matter de novo on TISCO's application for renewal of the ML "after hearing all parties, including ICCL and JSL."

29. Subsequent to the judgment of the High Court, a committee was constituted by the Government of India for rehearing and reconsidering the issue in regard

to the renewal of TISCO's ML. The committee submitted a report recommending renewal of TISCO's ML for a reduced area. The Central Government passed an order in accordance with the recommendation of the Committee. Simultaneously, in exercise of the powers under Rule 59(2) MCR, the Central Government relaxed the provisions of Rule 59(1) with the objective of expediting the process of the State Government granting MLs in respect of chromite ore to the four other parties, viz., ICCL, JSL, IMFA and FACOR for the balance area.

30. TISCO challenged the order dated 4th April 1995 of the Orissa High Court whereas another party, IDCOL filed SLPs challenging the same orders in the Supreme Court. One of the issues considered by the Supreme Court was "whether the High Court and the Committee were justified in hearing prospective applicants while considering the issue of renewal of TISCO's lease." As far as this issue is concerned, the Supreme Court, after discussing Rules 59 and 60 MCR and the fact that the Central Government had, after the judgment of the High Court, relaxed the requirement of Rule 59(1) MCR to enable other parties to be granted MLs, took the view that the High Court had taken the correct step in allowing the prospective applicants to put forth their point of view with regard to the renewal of TISCO's ML. Further, the Supreme Court observed as under (SCC, @ p.723):

47. ...As we have already pointed out, these issues involve considerably high stakes, both in term of commercial value and the effect that such a decision will have on the concept of mineral development and the consequent national interest. To that extent, those likely to be affected and indeed, those who can legitimately have a stake in the proper formulation of such a vital policy, can be heard. No exception can be taken to the High Court treating them as proper parties and directing the Committee to hear them.

48. We, therefore, hold that both the High Court and the Committee were justified in hearing the prospective applicants while considering the issue of renewal of TISCO's lease.

31. It appears to this Court that the facts of the present case are not very different from those in the TISCO case. In that case also other parties, i.e., ICCL, JSL, IMFA and FACOR had been heard by the High Court and permitted by it to be heard by the State Government in opposition to TISCO's application for renewal of lease. At the time when the Orissa High Court delivered its judgment on 4th April 1995, the Central Government had not passed an order under Rule 59(2) MCR. This happened only on 17th August 1995 when simultaneous with such order the Central Government requested the State Government to grant ML to the above four parties for the balance area. What weighed with the High Court was the locus standi of the above parties to oppose TISCO's prayer for renewal of the ML even at a time when no order had been passed in terms of Rule 59(2) MCR.

32. Although it has been pointed out by Ms. Kirti Mishra, the learned Advocate

that by the time the Supreme Court took up the appeal for hearing, the order under Rule 59(2) MCR had already been passed, a careful reading of the Supreme Court's judgment in TISCO case shows that it nevertheless approved of the order of the High Court permitting the "prospective applicants" to be heard on the issue of renewal of TISCO's lease.

33. The Petitioner here is another similarly placed "prospective applicant" and till date, in respect of the SAIL's prayer for renewal of mining lease, no order has been passed under Rule 59(2) MCR. The Petitioner can nevertheless be heard in opposition to SAIL's prayer for renewal of its lease. This does not mean that in the event of the SAIL's prayers being again rejected by the State Government, the lease will automatically be granted to the Petitioner. It is made clear that until and unless there is a notification in terms of Rule 59 MCR, in the event of a SAIL's prayer for renewal of its ML being rejected, there is no question of considering the Petitioner's case for grant of ML over the same area.

34. Consequently the impugned order dated 30th July 2009 passed by Respondent No. 2 dismissing the impleadment application of the Petitioner is hereby set aside and the order dated 16th October 2009 passed by the Respondent No. 1 disposing of the revision petition filed by Respondent No. 3 SAIL will stand modified by directing that the Petitioner will be heard by the State Government in opposition to SAIL's prayer for the renewal of its ML.

35. The writ petition is disposed of in the above terms but in the circumstances with no order as to costs. All pending applications stand disposed of.